

AMENDMENTS TO THE DRAWINGS

The attached sheets of drawings include changes to Figs. 16, 17A-C, 18A-B, 19, 20 and 27A-D. These sheets, which include Figs. 16, 17A-C, 18A-B, 19, 20 and 27A-D, have been changed by cleaning up the lines, and adding missing numerals to existing elements already shown in these drawings to correspond with the new paragraphs 97.1 to 97.7 of description added to the specification. There are no new features or elements added to these drawings by the replacement sheets but just numerals identifying existing structure already shown in the original filed drawings.

Next, new FIGS. 28 A-C are added showing the single chamber litter tray 206 in better detail. Support for FIGS. 28 A-C showing the single chamber litter tray 206 with a tray or waste lid 228 are found in the original specification at numbered paragraphs 59, 60 and 90-100. Therefore, the added FIGS. 28 A-C do not add new matter to the specification as originally filed as the written specification and claims both describe all of the features shown in these FIGS.

Attachment: Replacement Sheets

Annotated Sheets showing Changes

REMARKS/ARGUMENTS

In the specification, new paragraphs [0097.1] to [0097.7] were added after paragraph [0097] discusses in general terms the features already shown in Figs. 18A-27D.

In amended FIGS. 16, 17A-C, 18A-B, 19, 20-27A-D, the previously omitted element numerals, new numerals 10, 11 206a-h, and clarity to certain lines in the drawings have been cleaned up. New FIGS. 28A-D are added and fully supported by the original specification paragraphs 59-61 and 90-100 and the pending claims as originally filed. Therefore, there is no new matter being introduced by the FIGS. 28A-D.

Upon entry of the Amendment, Claims 8, 10, 12, 58, 59, 62, 63 and 92-104 are pending and new Claims 105 to 112 have been added regarding the litter cartridge. Claims 1-7, 13-57 and 64-89 have been withdrawn. Claims 9, 11, 60, 61, 91, have been canceled. Claims 8, 58, 59, 92, 93, 95-100, 102-104 have been amended. New Claims 105-112 have been added. An advisory opinion from the Examiner on any allowable subject matter is respectfully requested along with an interview with the Examiner, the Primary and/or Supervisory Examiners prior to the end of the 3 month period to demonstrate the commercial success of the single chamber litter tray product under *Graham v. John Deere Co.*, 381 U.S. 1 (1961) case, which serves as evidence of nonobviousness. There are also the structural differences between the claimed invention and the prior art cited in this case, which is another indication of nonobviousness. It is respectfully submitted that upon entry of the Amendment after final and consideration of the remarks below that the claims are in condition for an early allowance.

Claim Rejections – 35 USC § 102

Claims 103 and 104 have been rejected under 35 USC § 102 (b) as being anticipated by Thaler et al US Patent No. 6,378,461 (“the Thaler et al patent”). Claims 103 and 104 as now amended clearly call for a non-compartmentalized tray or single chamber tray 206 without a barrier wall between the litter area 206a and the animal waste storage area 206b. None of the cited prior art references contain this feature that distinguishes the claimed litter cartridge over the prior art references. Thus, this rejection is now obviated by the amendment to the claims 103 and 104.

One of the difficulties in proving anticipation through inherency in Thaler et al is that all the claim limitations must unequivocally be met by the prior art reference. The Board of Patent Appeals & Interferences (“Board”) addressed the issue of inherent anticipation in *Ex parte Levy*, 17 U.S.P.Q.2d 1461 (Bd. Pat. App. & Int. 1990). Here in the present claimed invention, there is no barrier wall between the litter and animal waste storage areas, whereas Fig. 18 in the Thaler et al reference simply shows removal of only the litter tray 300 and leaves the waste collection receptacle 68 in place behind the barrier wall 24. Only the litter tray 300 of Thaler et al is removable from the litter box 20 as shown in FIGS. 16, 17 and 18. Therefore, Thaler et al reference does not show the single chamber 206c limitation of litter tray 206 as now called for in all of the currently amended independent claims of the present claimed invention having the litter and waste contained within a single chamber 206c. Not only is the claimed structure of the present invention different from the Thaler et al reference but the Thaler et al reference includes two separate and unjoined compartment structures 68 and 300 for holding its stored waste and litter, respectively, that is just incapable of performing the same single chamber tray function as the claimed invention.

Like the *Ex parte Levy* case, the barrier wall 24 in the Thaler et al reference is the same as the biaxially oriented catheter balloon of a prior art reference in *Levy*, which includes an additional limitation (barrier wall 24 for Thaler et al equates to the biaxially oriented catheter balloon in *Levy*) or an additional element that is not present in the claimed invention. So before the burden shifts to the Applicant, the examiner must at least present a prima facie case of anticipation which would reasonably support the determination that the allegedly inherent characteristic of a single chamber without a barrier wall as called for in all of the currently amended independent claims of the present invention is now present in the cited reference and it necessarily flows from the teachings of the applied prior art. *Id* at 1464. This cited reference does not do so.

Moreover, the cover 548 of Thaler et al as shown in FIG. 26 is a hood or dome enclosure open at one end to provide privacy for the cat that walks into the litter box through the open end of the hood 548. This hood structure 548 and variations thereof as shown in FIGS. 25-28 of Thaler et al is not capable of functioning as a true storage cover 206i. The hood 548 is an arch structure providing cat privacy over the entire litter box 20, not for the litter tray. The Thaler et al hood 548 fails to close off its open litter tray 300 for disposal or storage purposes as currently shown in FIGS. 28 A-C in the claimed present invention. The storage cover 206i in the claimed invention secures both the litter and waste contained in the single chamber tray 206 for shipment, disposal or storage of the litter cartridge 206 as the storage cover 206i securely covers the entire single chamber litter tray 206c. Therefore, there is no suggestion or teaching by Thaler et al of the claimed structure in any of the independent claims 8, 102-104, 107, 108 and 112 for the single chamber litter cartridge 206 of the claimed invention having both the stored waste and the litter within the chamber without a barrier wall.

Claim Rejections – 35 USC § 103

Claims 8, 10, 12 58, 59, 62 and 63 have been rejected under 35 USC § 103 as being unpatentable over the Thaler et al patent in view of Kerr US Patent No. 4,193,624 (“the Kerr patent”). It is respectfully submitted that the claims, as amended, recite structure, not disclosed or suggested in either the Thaler et al patent or the Kerr patent. In particular, neither patent discloses a tray for use with a litter box machine which uses a single tray or single chamber tray carrying litter and waste and storing waste with litter within the single chamber tray. The single chamber tray includes a waste lid at one end that covers only a portion of the single chamber for storage of waste with litter at the one end when in a closed position and the lid **automatically** rotates to an open position as said moveable rake moves toward the waste lid and then the lid **automatically** returns to a closed position as said moveable rake moves away from said waste lid.

It is respectfully submitted that both the Thaler et al and Kerr patents teach away from the disposable **single tray chamber structure** as recited in the amended independent claims. The litter box machine 200, which uses the disposable **single, non-compartmentalized tray** cartridge for litter, waste and storage of waste with litter, includes a moveable rake which moves at a constant height above the bottom wall as it travels from the litter area to the waste storage area within the single tray chamber without a barrier wall between the litter and wastes storage areas. The single chamber tray is removable from the litter box machine when the effectiveness of the litter is used up. The Thaler et al patent teaches away from such a single disposable chamber tray for both used up litter and storage waste with litter that is not only compatible with the litter box machine 200 as recited in the independent claims 8, 102, 103, 104, 107, 108 and 112 but also lacks a barrier wall between the litter area and waste storage areas

within the single chamber 206c of the tray 206 as now called for in these currently amended independent claims.

Indeed, the Thaler et al patent teaches a litter box 20 having a separate litter tray 300 and a separate removable waste receptacle 68 with the barrier wall 24 between the litter tray 300 and waste receptacle 68 that comprise two separate trays. Moreover, the opening of the cover 69 on the waste receptacle 68 requires the rake comb 43 and its tines 44 to rotate in an upwardly movement of the rake assembly in the litter box 20 which eliminates any planar sweep across the litter tray as called for in the currently amended claims in the present invention. Thaler et al litter box 20 fails to meet these limitations of the present claimed invention. There is a **barrier wall 24** that requires the comb 43 of Thaler et al to tilt upwardly and travel up the barrier wall 44 to deposit the solid wastes into the waste receptacle 68 as do all of the other cited prior art references that also include the **barrier wall** structure that is not found in the presently claimed invention.

Kerr prior art reference is a portable dog waste scooper. Kerr also includes the **barrier or partition wall 30** that is between the waste area 20 and deodorant area 34 in which dog waste picked up from the ground is inserted only into divided compartment 20 and never moved to the deodorant compartment 34. Again it is a two separate compartment or tray setup. There is no teaching or suggestion in the Kerr reference of the **single chamber** structure in the pending independent claims as currently amended. Therefore, dependent claims 10, 12, 58, 59, 62, 63, 92 and 93 are all depending from independent claim 8 with the single tray chamber structure without a barrier wall between the litter and waste areas. So these dependent claims should be allowable too as depending from the allowable independent claim 8.

Independent claim 102 also includes the single tray chamber 206c without a barrier wall between the litter and waste storage areas. Because Thaler et al in view of Kerr references again show two compartments instead of a single chamber with a barrier wall between the separate chambers, claim 102 should also be allowable over the cited references.

Moreover, neither the Thaler et al patent nor the Kerr patent disclose or suggest a tray with a waste lid covering the animal waste mixed with the cat litter to form a waste storage area that can be automatically opened for reception of waste with litter and then returned to a closed position in response to movement of a rake that moves at a constant height within the litter and above the floor of the single chamber to move the waste material to the waste storage area within the single chamber tray. As the litter cartridge is now recited in the amended claims at issue, clearly distinguish over the cited prior art references, Applicants respectively request an early allowance of this patent application. For all of these reasons, the Examiner is respectfully requested to reconsider and withdraw the rejection of these claims.

Claim 99 has been rejected under 35 USC § 103 as being unpatentable over the Thaler et al patent in view of the Kerr patent further in view of Crosse US Patent No. 6,065,429 ("the Crosse patent"). Neither Thaler et al or Kerr teach the cover 206i that fits over the entire single chamber tray 206 of the independent claims in the present invention. The Crosse patent was cited for disclosing shrink wrap. The Crosse patent does not otherwise disclose or suggest a single chamber tray as recited in claim 99. Claim 99 is indirectly dependent upon claim 8. For this reason and the above reasons, the Examiner is respectfully requested to reconsider and to withdraw the rejection of claim 99.

Likewise, dependent claims 97 and 98 indirectly depend upon independent claim 8 that includes the single tray chamber without a barrier wall that is structure not shown by any of the cited prior art references in this case and therefore, claims 97 and 98 should also be allowable.

Claim 101 has been rejected under 35 USC § 103 as being unpatentable over the Thaler et al patent in view of the Kerr patent further in view of Scott US Patent No. 5,329,644 ("the Scott patent"). The Scott patent was cited for disclosing a disposable device having accordion fold lines. The Scott patent does not otherwise disclose or suggest a single chamber litter tray without a barrier wall as recited in claim 101 since Claim 101 is dependent upon claim 8. For this reason and the above other reasons, the Examiner is respectfully requested to reconsider and to withdraw the rejection of claim 101.

New claims 105 -112 include independent and depending claims therefrom that all include the single tray chamber 206c limitation without a barrier wall too and, therefore, all of the new claims 105-112 are also deemed to be allowable over the cited references of Thaler et al or in view of Kerr, Crosse or Scott.

Conclusion

None of the litter trays as disclosed by the cited references teaches or suggests a single chamber within a disposable litter tray or cartridge without a barrier wall between the litter and waste storage areas in the single chamber. In addition, all of the independent claims call for the waste end or waste area of the single chamber to be

covered by a lid wherein the litter and the waste areas are connected to each other within the single chamber that is compatible with a litter box machine that includes a moveable rake that only moves in a sweep at a constant height above the bottom wall across the single chamber of the litter tray to collect and store the waste at the waste end of the disposable single chamber tray. In addition, the claimed invention calls for a large cover that fits over the entire single chamber tray with the cat litter and waste wherein the storage cover contains the litter during shipment, stiffens the cartridge for easy handling and shipment plus facilitates disposal of a used cartridge. For all of the above stated reasons, the Examiner is respectfully requested to provide favorable consideration of the pending claims.

The Applicant would like to thank Examiner Mr. Justin Benedik for his cooperation and cordial telephonic communications during the transition from Applicant's former law firm to its present law firm and further encourages the Examiner to now allow the claims as currently amended. The amendments to the independent claims set forth new structural limitations that clearly overcome the cited art references in this case.

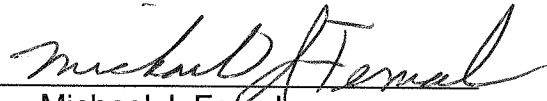
If for any reason the Examiner still finds any of the claims to be objectionable, the Examiner is encouraged to immediately contact Applicant's undersigned attorney telephonically to discuss an objectionable pending claims with Applicants undersigned attorney in the case that would be suitable for an Examiner's amendment. Often times an Examiner amendment during a telephonic conference with Applicant's attorney will take care of any minor objections to the claims as presently amended. Otherwise, in

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the alternative, Applicant respectfully requests that the Examiner telephonically call Applicants' attorney to setup an interview with Applicants and their attorney prior to the March 15th deadline to review the claims and case with the Examiner before any further action needs to be taken in the case.

Applicant believes no additional fees appear due. However, if any additional fees are required regarding the filing of this response, please charge such fees to our Deposit Account No. 13-0265.

Respectfully submitted,

By: 
Michael J. Fernal
Registration No. 27,784
Attorney for Applicant(s)

McDonald Hopkins LLC
300 N. LaSalle Street
Suite 2100
Telephone: (312) 642-1902
Facsimile: (312) 280-8232